

ENVIRONMENTAL PROTECTION AGENCY

Environmental Agency

100 California Street  
San Francisco, California 94111

Dr. Henri Minette  
Deputy Director for Env. Health  
Hawaii State Department of Health  
P. O. Box 3378  
Honolulu HI 96801

APR 12 1974

Dear Dr. Minette:

There is enclosed for your review our initial draft of a proposed Memorandum of Understanding regarding operation of the NPDES permit program by the State of Hawaii. We would appreciate receiving any comments you may have on it.

Your Attorney General's statement regarding the adequacy of Hawaii's authorities to conduct the NPDES program has been received and is now being reviewed. You should be hearing from us in the very near future if any problems remain regarding the statement on the statutes and regulations on which it is based.

I believe this would now be an appropriate time for you to submit a draft application for NPDES program approval. After we have had an opportunity to review it, a meeting should be arranged to permit us to resolve, any outstanding questions on any of these matters. I would hope we would both be ready for such a meeting on or about May 15th.

Should you wish to discuss any of this further, please give me a call.

Sincerely,

Original signed by  
R. L. O'Connell

R. L. O'Connell, Director  
Enforcement Division

Encl:  
Draft memo of Understanding  
CC:  
CDr. Marland  
Pacific Islands Basins Office

BC: A/W, w/encl.

815.4

CONCURRENCES

S/A.						
Reg. Counsel, w/encl.						
DAA for Water Enforcement, EG 335, w/encl						
RA w/o encl.						
Reading File	RO'Connell:lrc	5/12/74	File #164	OFFICIAL FILE COPY		

DRAFT

MEMORANDUM OF AGREEMENT  
REGARDING PERMIT AND ENFORCEMENT PROGRAMS  
BETWEEN THE  
DIRECTOR, STATE OF HAWAII DEPARTMENT OF HEALTH  
AND THE  
REGIONAL ADMINISTRATOR, REGION IX, ENVIRONMENTAL PROTECTION AGENCY

The Director, State of Hawaii Department of Health (hereinafter the "Director" and "Department", respectively) and the Regional Administrator, Region IX, Environmental Protection Agency (hereinafter the "Regional Administrator" and "Agency", respectively), in order to ensure a unified and coordinated program of water quality control in Hawaii, believe it highly desirable to develop understandings in various program areas. The Regional Administrator and the Director have entered into this Memorandum of Agreement to delineate the respective responsibilities of the Department and the Agency for operation of cooperative state-federal waste discharge permit and enforcement programs. This agreement establishes policies and procedures and provides broad guidance for issuance of National Pollutant Discharge Elimination System (hereinafter "NPDES") permits in the State of Hawaii in accordance with the 1972 Amendments to the Federal Water Pollution Control Act (P.L. 92-500, 33 U.S.C. 1251 et seq., hereinafter the "Act"). With respect to the NPDES permit program and resulting enforcement programs they do hereby agree as follows:

I. General Understandings and Policies

- A. It shall be the policy of Region IX of the Agency and the Department to fully coordinate and cooperate in the issuance of waste discharge permits under the NPDES. Furthermore, the Department and Agency shall mutually assist each other in all appropriate ways necessary to promote and conduct an enforcement program capable of providing maximum effectiveness in achieving federal and state objectives for the regulation of water quality. Periodically, the Director and the Regional Administrator, or their authorized representatives, shall meet to review

## CONCURRENCES

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DATE	4/15/74	4/12/74						

the state permit and enforcement activities and procedures under this agreement, and to revise such procedures as necessary to achieve compliance with federal and state objectives.

- B. In accordance with national policy as expressed in Section 101(b) of the Act, it is recognized that the issuance of NPDES permits and enforcement actions necessary for the protection and enhancement of waters in Hawaii are the primary responsibilities of the Department. The Agency has a primary role in providing policy guidance and, where feasible and appropriate, in providing financial and technical assistance. Furthermore, the Agency has a substantial interest in the issuance of permits and related enforcement matters.
- C. Following approval of the State's program pursuant to Section 402 of the Act, the Department, under state statutes and regulations, shall process and issue NPDES permits which are consistent and compatible with the Act and with the regulations and guidelines adopted thereunder. The Agency may provide written comments or recommendations on, or objections to, any NPDES permit to be issued. As used in this agreement, any "objections" transmitted to the Department by the Agency shall only be those which specifically identify a lack of compliance with the Act or regulations and guidelines adopted thereunder. Whenever the Agency "objects" to the issuance of an NPDES permit pursuant to the procedures contained in this agreement, the Department shall not issue that permit until all "objections" of the Agency have been eliminated. "Comments" or "recommendations" may relate to any matters not covered by "objections", as defined above. The Department shall take any "comments" or "recommendations" made by the Agency under consideration. If any part is not accepted for inclusion in the permit, the Department shall notify the Agency in writing of its disposition of such "comments" or "recommendations", together with its reasons for doing so.

- D. The Department, with technical assistance from and review by Region IX of the Agency, shall have responsibility for issuance of all NPDES permits in the State of Hawaii, except for point source discharges from federal facilities. Region IX of the Agency, with technical assistance from and review by the Department, shall have responsibility for issuance of NPDES permits for point source discharges from federal facilities and discharges to the contiguous zone or ocean. The Agency shall take any comments or recommendations made by the Department under consideration. If any part is not accepted for inclusion in the permit, the Agency shall notify the Department in writing of its disposition of such comments or recommendations, together with its reasons for doing so.

## II. Definitions

All terms and phrases used in this agreement shall have the same meaning as in the Act and Chapter 342, Hawaii Revised Statutes and amendments thereto or regulations promulgated thereunder.

## III. Permit Program

### A. Transmittal of Data from Agency

1. All relevant data collected by the Agency prior to final approval of the state permit program shall be transmitted to the Department. Such data shall include:
  - (a) Copies of all complete and pending Refuse Act and NPDES applications received by the Agency for facilities in the State of Hawaii, including copies of all pertinent correspondence between applicants and the Agency regarding such applications.

- (b) Copies of any fact sheets, public notices and proposed permits drafted by the Agency for facilities in the State of Hawaii.
  - (c) Any other documents, reports, or other pertinent data on facilities in the State of Hawaii which have applied for NPDES permits.
- 2. Within sixty (60) days after final approval of the state permit program, the Agency shall transmit such material, except that if the Agency identifies any application which it considers to be incomplete, it shall transmit the application to the Department together with (i) a statement by the Agency that it considers the application to be incomplete, and (ii) a list of the information that the Agency believes is necessary to complete such application.
  - 3. For each application identified by the Agency as incomplete and transmitted to the Department, the Department shall obtain the necessary information from the discharger and complete the application. Once the Department has determined that the application is complete, it shall transmit to the Agency two (2) copies of the completed application and cover letter indicating that the application has been determined to be complete. The Agency shall then, if it considers the application to be complete, so certify in writing to the Department.

B. Transmittal of Data to Agency

- 1. The Department shall ensure that copies of all NPDES forms, including, but not limited to, NPDES applications, NPDES reporting forms, and other uniform national forms which have not been reviewed for completeness by the Agency, shall be promptly transmitted to the Agency upon receipt by the Department.

2. The Department shall also ensure that the Agency shall receive copies of the notices submitted to the Department from publicly owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

C. Processing of NPDES Applications

1. All applications received by the Department from the Agency or directly from applicants shall be reviewed initially by the Department for completeness. Applications which are obviously incomplete shall not be accepted by the Department for filing and shall be returned to the applicants for completion.
2. The Department shall transmit to the Agency two (2) copies of each application determined by the Department to be complete. The Agency shall then notify the Department in writing of any deficiencies in such applications. The Agency shall specify the nature of the objections and the information required as a condition to elimination of its objections to the applications. The Department shall contact the applicant to obtain the necessary information to complete the application and will send such information to the Agency. The Department shall issue no NPDES permit until it has received written notice from the Agency that the application is complete.
3. As to any completed application received from the Department, the Agency shall notify the Department of any discharge having a total volume of less than 50,000 gallons per day which the Agency identifies as not a minor discharge.

D. Effluent Limitations Guidelines

1. In processing NPDES permit applications and drafting NPDES permits the Department shall utilize and follow effluent guidelines for various categories of point sources to be promulgated from time to time in the Code of Federal Regulations. It is possible, however, that data which could affect the effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available have not been available to the Agency in development of such guidelines and, as a result, these limitations should be adjusted for certain plants in an industry or industrial subcategory.
2. An individual discharger or other interested person may submit evidence to the Department that factors relating to the equipment or facilities involved, the process applied, or such other technical factors related to such discharge, are fundamentally different from the factors considered in the establishment of the guidelines.
3. On the basis of such evidence or other available information, the Department shall make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document for the effluent guidelines. If such fundamentally different factors are found to exist, the Department shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established in the applicable effluent guidelines to the extent dictated by such fundamentally different factors.

4. Such limitations must be approved by the Administrator of the Agency. The Department shall forward such modified limitations, together with its written finding and justification therefore, to the Agency pursuant to the procedures in paragraphs H.2. and H.4., below. The Administrator may approve or disapprove such limitations or specify other limitations. The permit shall not take effect until that determination has been made.
5. Any public notice of a permit application or public hearing, if it regards a permit containing effluent limitations dictated by fundamentally different factors, shall state such and shall briefly describe the reasons for such limitations. The notice shall also state that such limitations are subject to review and approval by the Administrator.

E. Thermal Discharges

Upon promulgation by the Agency of regulations under Section 316 of the Act, the Agency shall provide the Department with written guidance on how the Department shall comply with the intent of such regulations and the Department shall utilize such regulations and guidance in the administration of its permit program.

F. Public Access to Information

1. All information received by the Department relating to the NPDES permit program must be released to the public unless such information is afforded confidential treatment.
2. If the information being considered for confidential treatment is contained in an NPDES form, the Department shall transmit a copy of such information to the Agency and



request that the Agency concur in such determination of confidentiality. The Department shall make such information available to the public if the Agency, upon the advice of its General Counsel, informs the Department in writing that the Agency does not concur in the withholding of such information.

3. Any information accorded confidential status by the Department, whether or not contained in an NPDES form, shall be disclosed by the Department, upon written request therefor, to the Agency, or its authorized representative, who shall maintain the disclosed information as confidential.

G. Public Notice

All public notices shall provide a thirty (30) day period for submission of written comments and opportunity for request for a public hearing on the activity. All nonconfidential records and information, including fact sheets, proposed NPDES permit provisions, applications, and other supporting documents will be available for public inspection and copying at the Department headquarters and at such other locations as the Department shall designate.

H. Transmittal to Agency of Proposed Permits

1. It is in the best interest of the Agency and the Department to reach agreement on all terms and conditions to be contained in NPDES permits prior to issuance of a public notice. Accordingly the Department will forward to the Agency for review each draft permit it proposes to issue at least thirty (30) days prior to the proposed date of the public notice.

2. At the time a public notice required by 40 CFR 124.32 is issued, the Department shall transmit one copy of the NPDES public notice, fact sheets, and proposed NPDES permit to the Agency. The information transmitted with the proposed permit shall include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit.
3. After a public notice period has expired, the Department shall consider all comments received as a result of the public notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings shall be held when and as provided for in 40 CFR 124.36.
4. If a proposed NPDES permit issued with a public notice is modified as a result of the public notice or public hearing, a revised copy of the proposed NPDES permit shall be transmitted to the Agency for review prior to issuance.

I. EPA Review and Draft Permit Objections

1. The Department shall provide the Agency thirty (30) days from the time the proposed permit specified in either paragraph 2 or 4 of section H above is received in which the Agency, pursuant to any right to object provided in Section 402(d)(2) of the Act, may comment upon, object to, or make recommendations with respect to the proposed NPDES permit. If modifications recommended by the Agency are not incorporated into the final NPDES permit by the Department, the Department shall state in writing to the Agency its reasons for not doing so.
2. The Department shall not issue a proposed NPDES permit if the Agency objects to its issuance. If no objection is received by the Department within thirty (30) days as provided above, the Department may issue the permit.

**J. Transmittal of Data by Permittee to Agency**

The Department shall ensure that all NPDES permits issued by the Department require the permittee to transmit directly to the Agency one copy of all forms and data required to be submitted by the permittee to the Department.

**K. Transmittal to Agency of Issued Permits**

The Department shall transmit to the Agency two (2) copies of every issued NPDES permit, together with any and all terms, conditions, requirements, or documents which are part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants. The Department shall transmit the above information at the same time the NPDES permit is issued by the Department to the applicant.

**L. Transmittal of Data to National Data Bank**

1. The Department shall exert its best efforts to install a computer time share terminal. After such terminal is installed, the Department shall transmit to the National Data Bank by direct input to the General Point Source File (GPSF) all NPDES application information, permit processing information, permit conditions - including compliance schedules and self-monitoring requirements, compliance reporting and self-monitoring report data, as appropriate.
2. Until such time as the Department shall install a terminal, and for a period of sixty (60) days after installation, the Agency shall transmit the NPDES information specified in paragraph 1 above to the National Data Bank. During the 60 days after installation, the Department, with assistance from the Agency, shall develop a capability for direct input to the GPSF.

M. Modification, Suspension or Revocation of NPDES Permits

The Department shall notify the Agency whenever it finds it necessary or advisable to modify, suspend or revoke an NPDES permit in whole or in part for cause or for any other reason. The Agency shall have up to thirty (30) days to review and comment on proposed modifications. If no written objection is received from the Agency within thirty (30) days, the Department may deem the proposed modification approved. No modification of an NPDES permit to which the Agency objects shall be made.

IV. Monitoring and Inspection

A. General

It is recognized that an efficient and well-organized monitoring and inspection program is necessary to ensure the success of the NPDES. Such success will be ensured only if the resources of the Agency and Department are coordinated so as to avoid duplication of effort. Primary responsibility for ensuring compliance through monitoring results rests with the Department for permits which they issue.

B. Procedures

1. Each year by 1 July the Department shall provide the Agency with a plan for sampling and analysis of permitted effluents for the next twelve months. Any revisions made to the plan during the year shall be reported in writing to the Agency.
2. The Department shall develop an inspection program which ensures that as a minimum each major discharger will be inspected no less than once annually. The state inspection program shall be consistent with the principles described in "Program Guidance for Environmental Protection Agency Water Compliance Monitoring" (Office of Water Enforcement, EPA, February 1974).

3. All results of field monitoring by the Department shall be furnished in writing to the Agency. The Agency shall notify the Department prior to the Agency's conducting any field monitoring activities, and shall provide the Department with results of field monitoring activities.
4. The Department shall ensure that:
  - (a) All NPDES permits contain self-monitoring programs which will enable the Department and the Agency to determine whether the discharger complies with all requirements and prohibitions, including effluent limitations, national standards of performance, and pretreatment and toxic effluent standards.
  - (b) All NPDES dischargers maintain records of all information resulting from monitoring activities for a period of at least three years, or during the course of any unresolved litigation regarding the discharge, or such period as is requested by the Department or the Agency, whichever shall be the longer period.
  - (c) Monitoring information shall include for all samples (i) the date, exact place, and time of sampling; (ii) the dates analyses were performed; (iii) who performed the analyses; (iv) the analytical techniques/methods used; and (v) the results of any such analyses.
  - (d) Monitoring reports are submitted by each NPDES discharger to the Department and directly to the Agency at appropriate intervals, as specified in the permit.

- (e) Monitoring results are reported on the proper NPDES reporting form as specified and supplied by the Agency and are reviewed on a periodic basis sufficient to determine that NPDES permit requirements are being met.
- 5. The Agency may identify, in accordance with 40 CFR 124.61, certain minor discharges and may specify additional monitoring conditions to be included in such permits. The Department shall establish such additional monitoring requirements in any NPDES permit as the Agency may require in writing.
- 6. The Department shall review and evaluate, for possible permit violations, all notices received from publicly owned treatment works for introduction of pollutants into such treatment works from new sources, any substantial change in volume or character of pollutants being introduced into the treatment works at the time the permit is issued, and progress towards compliance with pre-treatment standards by each subject industrial user.
- 7. The Department shall review and evaluate NPDES monitoring data, as received, for possible violations of terms and conditions of the permit. If the Department determines that any terms or conditions of the permit are being violated, it shall notify the permittee and the Agency of the alleged violations. Where monitoring data shows that effluent limits are exceeded, the Department shall so advise the Agency, and shall identify the effluent limits exceeded, describe briefly any action or

proposed action by the NPDES permittee or the Department to comply or enforce compliance with the limits, and describe any details which tend to explain or mitigate an instance of noncompliance.

V. Enforcement Action

A. General

It is recognized that an effective and aggressive enforcement program is necessary to stimulate compliance with NPDES permit requirements and that the State shall have primary responsibility for taking appropriate enforcement action against persons in violation of NPDES permits.

B. Notification of Violations by State

1. The Department shall ensure that the Agency is notified forthwith of any violation by any discharger of any effluent limitation, water quality related effluent limitation, national standard of performance, pretreatment and toxic effluent standard, NPDES filing requirement, compliance schedule, or of any failure to permit or carry out inspection, entry, or monitoring activities. Normally, the monitoring reports and reports of noncompliance as required by federal regulations to be transmitted from the permittee to the Agency will suffice to meet the above requirements; however, in the event the Department determines that violations have occurred which are not included in the monitoring report or any other required report, the Department shall promptly notify the Agency of such violations.
2. The Department shall submit quarterly reports of noncompliance as required by 40 CFR 124.44(b).

C. Proposed enforcement Action

1. The Agency shall be advised of enforcement action undertaken by the Department, whether such enforcement action is administrative, criminal, or civil in nature, or a combination thereof. The Agency shall advise the Department of any enforcement procedures it may believe necessary other than those taken by the Department.
2. The Department shall ensure that enforcement action is pursued vigorously, and that the Agency is advised of the progress of enforcement proceedings and of any hearing related to enforcement, whether administrative or judicial. The Agency may participate in any administrative enforcement hearing and shall, within the resources available to it, provide staff assistance upon request by the Department in any public hearing relating to enforcement.

D. Notification by State of Violation of Enforcement Orders

The Agency shall receive a copy of any order or directive related to compliance, whether administrative or judicial, and shall be forthwith advised of any violation of any such order or directive and of the proposed enforcement action to be undertaken by reason of violation, of any hearings related thereto, of the progress thereof, and of the results of enforcement proceedings.

E. Danger to Health or Welfare of Persons

1. The Department shall ensure that any pollution source or combination of sources which by the discharge of pollutants substantially endangers the health or welfare of persons is immediately subjected to appropriate enforcement proceedings, including, but not limited to, a request for injunctive relief.



2. The Department shall also ensure that the Agency receives immediate notice by telephone, or otherwise, of any actual or threatened endangerment to the health or welfare resulting from the actual or threatened discharge of pollutants into the waters of the State. The Department shall utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Agency.

F. Notification by Agency of Violations

Whenever the Regional Administrator under his authority in Section 309(a)(1) of the Act makes a finding of a violation and notifies the Director and the person in alleged violation of such finding, the Director shall immediately respond to such notification by advising the Regional Administrator of the action proposed with respect to such violation. Nothing in this agreement shall be construed to limit the authority of the Regional Administrator to take action pursuant to Section 309(a)(2) and (3) of the Act. However, generally the Regional Administrator will undertake direct enforcement action under 309(a)(3) only when the Department is unable or unwilling to take appropriate enforcement action or when enforcement proceedings are unduly delayed.

VI. Well Disposal

1. The Agency shall transmit to the Department any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act, or in directives issued to Region IX of the Agency, concerning the disposal of pollutants into wells.
2. In accordance with the requirements of 40 CFR 124.80, the State shall establish a permit program to control the disposal of pollutants into wells. Any such disposal shall be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources.

## VII. Agency Waiver

The Regional Administrator may expressly waive any and all of his rights to:

- (a) receive, review, object to, or comment on copies of NPDES forms, NPDES applications, or proposed NPDES permits,
- (b) receive issued NPDES permits and orders, and
- (c) receive notice of, review, object to, or comment on intended revisions or modifications of particular NPDES permits or orders,

with respect to any class, type or size of discharge within any category of point sources and with respect to discharges to particular navigable waters or parts thereof. Such written waiver must be issued by the Regional Administrator before the Department may cease to transmit such forms, permits and relevant information to the Agency.

## VIII. Changes in State Statutes, Regulations, Directives, Forms or Standard Test Methods

1. Prior to taking any action to propose or effect any substantial amendment, recission or repeal of any statute, regulation, directive or form which has been submitted to the Agency in connection with approval of the State's NPDES program, and prior to the adoption of any new form not so submitted, the Department shall notify the Agency and shall, upon request, transmit the text of any such change or such new form to the Agency. The Agency shall have twenty (20) days in which to assess such proposed change or such proposed new form as to its effect upon the State's qualification to conduct the NPDES program and to notify the State whether or not the proposed change or use of such proposed new form would disqualify the State from participation in the NPDES.

2. If an amendment, rescission or repeal of any statute, regulation, directive or form described in paragraph 1 above shall occur for any reason, including action by the Hawaii legislature or a court, the Department shall, within ten (10) days of such event, notify the Agency and shall, upon request, transmit a copy of the text of such revision to the Agency.

#### IX. State Performance

1. The Department shall reissue by December 31, 1975 all federally-issued NPDES permits (except for federal facilities), and by December 31, 1974, issue NPDES permits for all other dischargers covered by such program within the State of Hawaii.
2. The permittees referred to in paragraph 1. above are identified in Appendices A and B.

#### X. Term

This Memorandum of Agreement, including Appendices A and B, shall take effect upon program approval by the Administrator of the Agency pursuant to Section 402(b) of the Act. This Memorandum shall remain in effect for the duration of such approved program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods contained herein.

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